



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

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8ENF-L

**BY U.S. MAIL**

Kenneth Lund  
Holme, Roberts & Owen  
1700 Lincoln St., Suite 4100  
Denver, CO 80203-4541

Re: Libby SEP

Dear Mr. Lund:

I am sorry it has taken me so long to provide comments on the draft "Libby Health Care Project Administrative Services Agreement (the "Agreement"). I have reviewed the Agreement carefully in light of the Consent Decree (Civ. No. 00-167-M-DWM) which formed the Supplemental Environmental Project. My comments are provided in the order that the topics arise in the Agreement.

Section 1 - third line from bottom - "Consent Decree" should be "Agreement".

Section 2 - Definitions, #12, should read "as defined by Section 2, number 4", not "as required by Section 2, number 4."

Section 4.2 - third paragraph - This language seems to broaden the scope of documents available to other entities retained by Grace beyond those available to Grace. I would suggest the following language: "We will also provide reasonable access to information to an entity providing services to you, such as an auditor or other consultant, if you request it and that information would otherwise be available to you under this section."

Section 4.4 - Add "obligations" at end of first sentence between "or to perform" and "under this Agreement." Last clause of second sentence in first paragraph should read "to administer the HCP or to perform obligations under this Agreement."

Section 5 - W.R. Grace is required to perform audits of the HCP. The level of involvement in the HCP is not great enough to justify any kind of indemnification language. Section 5 should be deleted.



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Section 6.1 - 2<sup>nd</sup> sentence - should read “we may agree”, rather than “we will agree”.

Section 6.1 - 4<sup>th</sup> sentence - Add language to have sentence read “Both parties will cooperate fully with each other in the defense of the HCP Benefits Litigation, unless there is a conflict of interest.”

Section 6.1 - last sentence - This sentence should be deleted, as W.R. Grace has no reason to dictate which settlements are appropriate and which are not. Once again, Grace’s function is to audit and enforce, not to control the day to day operation of the HCP.

Section 6.2 - first sentence - The language “and/or the HCP” should be changed to “or against you and the HCP.” Failure to make this change results in Section 6.1 and 6.2 conflicting with each other.

Section 6.2 - 2<sup>nd</sup> sentence - should be changed to reflect that such full cooperation can only occur where there is no conflict of interest.

Section 7.1 - The wording of this section implies that the HCP Fund should be paying “taxes” that W.R. Grace incurs in performing its obligations under the Consent Decree. I disagree. Thus, #3 should be deleted and the last sentence should be deleted.

Section 8.1 - The HCP Trustees should decide the period in which claims may apply. Therefore, delete the second sentence.

Section 8.2 - The second sentence should read: “However, we may agree to continue providing certain other services not funded by, or subject to this Agreement, beyond the termination date.”

Section 11.1 - While I offer no substitute language here, I believe it would be appropriate for the HCP to hire an independent contractor for some activities and to only be responsible to the degree provided under Montana law.

Section 11.2 - W.R. Grace can not assign its rights and obligations under the Agreement without violating the Consent Decree. Therefore, this section needs major modification.

Section 11.3 - The Consent Decree entered in the Montana federal district court is also governing law.



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Please call to set up a time to further discuss these issues, if necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Cohn", written in a cursive style.

Matthew Cohn  
Legal Enforcement Program

cc: Charles Evans, Asbestos Related Libby Health Care Project Board

